IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1772 of 2006
With
CRIMINAL APPEAL No. 1775 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
JAYABEN MALDEVBHAI DEVIPUJAK

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Appearance :
MR KP RAVAL APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/10/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Both the above referred Criminal Appeals have been preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Presiding Officer, 4th Fast Track Court, Gondal at Upleta on 9th of May, 2006 in Sessions Case No. 74 of 2002 with Sessions Case No. 79 of 2002, whereby all the nine accused and respondents of these Appeals came to be acquitted by the Trial Court for the offences punishable under Sections 143, 147, 148, 149, 323, 504, 427, 506(2) of the Indian Penal Code as well as for the charges under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 According to prosecution case, on 10th of July 2002, complainant Manjuben, wife of Karsanbhai Becharbhai, offered her complaint before Police Inspector Mr. V.V.Gohil, LIB Rajkot (Rural) that she was staying at Upleta in Ambedkarnagar area. She had one daughter and one son. Son Madhabhai was staying at Surat while daughter Diwaliben, married to one Bavanji Karsan, was staying in adjoining neighbourhood. According to complainant, along with her, her mother Punjiben and grand-daughter Chetna were also staying at Ambedkarnagar. On 15th of May, 2002, she was doing business in grocery shop attached to her house. At that time, at 11.30 am to 12.00 noon accused came in drunken

condition and they were watching TV kept in the shop. Complainant prevented them from watching TV because they were in drunken condition. Therefore, accused Bhupatbhai Bijalbhai called all the accused and they lifted TV and thrown on the ground. All the accused started beating her with kicks and fists and started abusing her and they uttered insults with respect to her caste. She was threatened that she must close her shop and they damaged furniture kept in the shop. They also entered in her house and damaged household articles. She raised shouts and therefore Jayaben Chhaganbhai and Laduben Ramjibhai immediately came there and accused ran away, but threatened that she would be done to death. She had been to Upleta Police Station for giving complaint, but Upleta Police Station did not record her complaint. Therefore, she had been to Rajkot for giving her complaint. From this complaint, DSP, Rajkot, asked the crime to be registered at Upleta Police Station, vide Crime Register No. 77 of 2002 and investigation was handed over to In-charge Dy. S.P. Mr. Dharmendrasinh Bhavatsinh Zala. After investigation, first, he submitted charge sheet against eight accused as accused No.9 Jayaben Maldevbhai Devipujak was not found and said case was registered vide Crime Register No. 548 of 2002. Thereafter, accused No. 9 Jayaben Maldevbhai - respondent of Criminal Appeal No. 1772 of 2006 was arrested and separate charge sheet was submitted against her on 20.9.2002, which was registered as Criminal Case No. 583 of 2002. Both the criminal cases No. 548 of

2002 and 583 of 2002 were committed to the Court of Sessions and were numbered as Sessions Case No. 74 of 2002 and Sessions Case No. 79 of 2002. Since both the cases had arisen from the same incident and same crime, both the Sessions Cases were tried together and were disposed of by common judgment by the Trial Court. Trial Court framed charges against all the nine accused vide Exhibit-1 on 1st of May, 2005 and each of the accused pleaded not guilty and, therefore, they were put to trial. Prosecution, therefore, examined as many as 10 witnesses and produced on record documentary evidence. On prosecution evidence being over, statements of each of the accused was recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. The Trial Court thereafter heard prosecution as well as defence in respect of both the cases and came to the above conclusion and, hence, both these appeals.

3 Learned APP Mr. K.P. Raval for the appellant State was heard in respect of both the Appeals in detail at this juncture.

4 We have gone through both the Appeals thoroughly. We have examined the Record and Proceedings called for from the Trial Court. We have re-appreciated the evidence and scrutinized the conclusions arrived at by the Trial Court in coming to the conclusion of acquittal of all the accused and also taken into consideration the contentions raised by learned APP on behalf of

the State.

5 Going through the Record and Proceedings, it appears that PW-1 Jaipalsinh Vagubha Jadeja, panch of panchnama of scene of offence at Exhibit-21 did not support the prosecution case in respect of panchnama. PW-2 Karsanbhai Danabhai Khambhla, second panch of the said panchnama, has also not supported the prosecution case. PW-3 Raidhanbai Bhojabhai, examined at Exhibit – 23, is panch of arrest panchnama of the accused, placed on record at Exhibit– 24, and is not much helpful to the prosecution case. PW-5 Jayaben Chhaganbhai, examined at Exhibit- 31, and PW-6 Laduben Rambhai, examined at Exhibit-32 were eye witnesses of the incident, but none of them supported the prosecution case and deposed that none of them knew anything about the quarrel took place, in which the complainant Manjuben was beaten by the accused and her shop was damaged.

6 Now there are four witnesses examined by the prosecution to prove the case and are material witnesses. Those witnesses are PW-4 Manjuben Karsanbhai, Exhibit – 27; PW-7 Diwaliben Bavanjibhai, daughter of Manjuben, examined at Exhibit–38; PW-8 Chetnaben Bavanji Pargi, examined at Exhibit-39 and daughter of Diwaliben; Bavanjibhai Karsanbhai Pargi, PW-9, examined at Exhibit – 40, husband of Diwaliben. Going through the evidence of these four witnesses, it clearly appears that each

witness submits before the Court different story than in complaint, which is placed at Exhibit – 28. Manjuben stated that she was at the shop and accused came, gave abuses. She was beaten and the accused damaged TV and goods kept at shop and house. The accused were in drunken condition. While in her deposition she stated that at the time of the incident, she was at her house and her mother and her grand daughter Chetna were sitting at the shop and accused came to the shop and the incident occurred wherein accused threatened her to close the shop and uttered insults about her caste. Accused were not properly behaving and, therefore, Chetna came to her house with her. She stated that Jayaben Chhaganbhai and Laduben Rambhai were there. She was confronted with her police statement as well as her complaint. She admitted that she did not take any treatment though she was beaten by the accused. While Diwaliben, PW-7, examined at Exhibit – 28, stated before the Court that at the time of incident i.e at 11.00 to 11.30 am Bhupatbhai Bijalbhai came to their shop to watch TV and while he was watching TV, Bhupatbhai was prevented by them. He started quarreling and, therefore, daughter Chetna with her mother Manjuben came at the spot and asked Bhupatbhai Bijalbhai to get out of that place and never to return. Bhupatbhai, therefore, called other accused, who thereafter abused Manjuben and caused damage to TV and other articles kept in the shop and house. They had been to Upleta Police Station, but their complaint was not recorded and they were sent

to DSP, Rajkot, where the complaint was recorded. Chetnaben Bavanji, examined at Exhibit – 39, stated that at the time of the incident, she was at shop. Bhupatbhai came at the shop and started abusing and, therefore, she called her grand mother. Bhupatbhai was asked to leave by her grand mother and close down the TV. Therefore, Bhupatbhai started beating her grand mother and he also damaged the goods kept at the shop. Thereafter Bhupatbhai had gone away from that spot and her mother was also left the shop. Thereafter at 2.30 p.m. all the accused came with sticks and pipes and started beating her grand mother and her parents. She was confronted with her police statement. While fourth witness i.e. PW-9 Bavanjibhai Karsanbhai Parghi, examined at Exhibit- 40, stated that one boy, named as Munno, had been to the shop and asked her daughter (Chetna) to close the TV otherwise he would break the TV. Therefore, his daughter Chetnaben called Manjuben. When Manjuben came at the spot, all the accused started giving abuses to Manjuben and utterred insults about her caste. Thereafter he went to his house and while he was taking his meal, accused came and started beating him. In his cross-examination, he admitted that, when incident took place at shop, he was at home. He also stated that, first they approached Upleta Police Station, but they were not responded by Upleta Police Station and, therefore, they went to Rajkot and gave complaint before Dy. S.P.

7 Investigating Officer PW-10 Dharmendrasinh Bhagvatsinh Zala is examined at Exhibit – 42.

8 Now from the above evidence, it clearly transpires that each witnesses stated different story than the story which was originally stated by Manjuben in her complaint. When they were confronted with their police statements, it clearly appears that there are such contradictions going to the root of the prosecution case and, therefore, no reliance can be placed upon any of the witnesses. The original story of the prosecution was that Manjuben was at the shop and accused came there and incident occurred. While two witnesses, Diwaliben and Chetnaben deposed that Manjuben was at her house and she came thereafter when she was called by Chetnaben. Chetnaben deposed that, at first instance, at about 11.00 a.m. only Bhupatbhai came and he was asked to leave by her grandmother and thereafter in the afternoon all the accused came and gave beating to her grandmother. While PW-9 Bavanjibhai deposed different story and stated that he was present when the first incident took place and accused came to his house when he was taking meal and he was beaten. This is all transpires from the appreciation of evidence and none of the witnesses therefore is credible in respect of the prosecution case. At the same time, it must be noted that the complaint in the case was preferred before LIB Rajkot (Rural) while all the witnesses stated that on the next day of the incident, they approached Upleta

Police Station, but no response was given by Upleta Police Station and, therefore, on the third day, they approached Rajkot Dy. S.P. and gave their complaint. It is on record that, in fact, this complaint is given by the complainant after 40 days of the incident. No explanation in this respect is coming forward from any of the prosecution witnesses. No satisfactory evidence is on record to come to the conclusion that at any time complainant had approached Upleta Police Station and had requested to record a complaint, and that Upleta Police Station did not respond. In these circumstances, it is very difficult to believe that there was any credibility to the say of the witnesses when each of the witnesses stated that on very third day of the incident, complaint was lodged at Rajkot. It is also required to be noted that no medical treatment, whatsoever, was obtained by complainant Manjuben though according to her she was beaten. All these circumstances i.e. (i) different story narrated by each witnesses; (ii) each witness narrates different story than First Information Report; (iii) the FIR came to be filed late by 40 days and (iii) no medical evidence is available, lead to the only conclusion that the prosecution failed to establish case against any of the accused and for these reasons, the learned Trial Judge acquitted all the accused.

9 This being appeal against the acquittal, order of acquittal as per the established law, cannot be interfered with lightly. The scope of appeal against the order of acquittal is well

settled. There may be legitimate view possible from the evidence recorded during the trial than the view taken by the trial court, but unless it is established that the conclusions arrived at by the Trial Judge are perverse, palpably wrong, demonstrably unsustainable and manifestly erroneous, no interference is permitted in the judgment and order of acquittal.

10 When we scanned threadbare the evidence recorded and conclusion arrived at by the Trial Court, we have no hesitation to come to the conclusion that this is a case wherein even second view is not possible and only possible view is taken by the Trial Court. Therefore, after careful scrutiny of the judgment and order impugned in this Appeal and the Record and Proceedings of the Trial Court, even at this stage, it clearly transpires that there is no substance in both the Appeals and the judgment and order of acquittal impugned in both the Appeals, requires no interference at all. Hence, the following order.

> "Leave to Appeal in both the Appeals is refused and both the Appeals are dismissed."

(J. R. VORA, J.)

(M. R. SHAH, J.)

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